

Congress of the United States

Washington, DC 20515

August 10, 2018

The Honorable Alex Azar II, Secretary
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, D.C. 20201

RE: CMS-2413-P: Medicaid Program; Reassignment of Medicaid Provider Claims

Dear Secretary Azar:

We write to oppose the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) proposed rule: Medicaid Program; Reassignment of Medicaid Provider Claims. By prohibiting home care workers from paying for health insurance or union dues automatically from their paycheck, the proposed rule infringes on home care workers' right to join a union directly affecting their ability to access health insurance coverage, skills training, and improved working conditions. Health insurance in particular is a critical benefit, and we should be doing more to improve access—not adding additional and unnecessary roadblocks to coverage. The proposal would also exacerbate the existing home care worker shortage, and seriously impact the ability of seniors and people with disabilities in California to access quality care in their homes and communities. For these reasons, we strongly urge you to withdraw the proposed rule and protect the rights of American workers and patients.

HHS' proposed rule will disproportionately impact California. We have the largest consumer-directed home and community based service program in the nation, which allows more than half a million of the state's seniors and people with disabilities to receive care in their communities.^[1] These programs provide high-quality alternatives to institutions, delivering cost-effective and culturally responsive care in the comfort of a patient's own home or community.

The home care workforce—which is 90 percent women, the majority of whom are women of color—is critical to the success of home and community based services and the ability to deliver high-quality home and community care.^[2] In California and across the nation, unions have partnered with home care workers to begin to stabilize and grow the workforce, raising wages and ensuring access to benefits like health insurance coverage and skills training to improve job conditions.^[3]

If implemented as HHS currently intends, the proposed rule would unnecessarily deepen a growing care crisis. By making it more difficult for home care workers to join unions, the proposal will hinder the state's ability to combat high turnover rates through increased pay,

^[1] Watts, Molly O'Malley, Kaiser Family Foundation, *Medicaid Home and Community-Based Services: Results From a 50-State Survey of Enrollment, Spending, and Program Policies* (2018).

^[2] Campbell, Steven, Paraprofessional Healthcare Institute (PHI), *U.S. Home Care Workers: Key Facts* (2017).




^[3] Howes, C, "Living Wages and Retention of Homecare Workers in San Francisco," *Industrial Relations: A Journal of Economy and Society*, 44: 139-163. Researchers examined the effect of wage increases for 18,000 home care workers in San Francisco over the years 1996-2002, after workers won substantial wage increases through their union, and found a significant decrease in turnover associated with the pay increase; Institute of Medicine, *Retooling for an Aging America* (2008), p. 220.


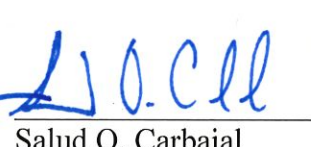

professional growth opportunities, and countering the isolation that has been found responsible for workforce instability and the deficit of workers.^[4] The negative impact of the proposed rule would not only be felt by the home care workers, but by the thousands of seniors and people with disabilities that rely on them to deliver care every day.

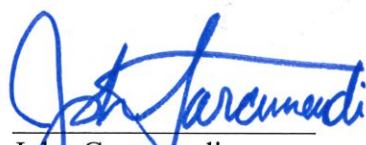
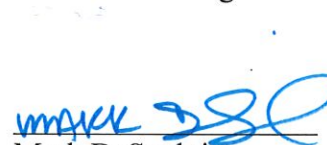
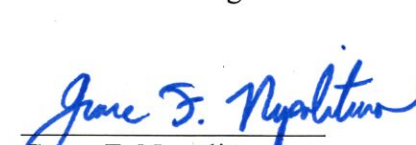
Finally, we want to register our concern about the process underlying this Notice of Proposed Rulemaking. Under Executive Order 13563, Improving Regulation and Regulatory Review, agencies should afford the public a meaningful opportunity to comment on any proposed regulations, with a comment period that should generally be at least 60 days. HHS provided no justification for a 30 day comment period. Furthermore, as the proposed rule itself acknowledges, HHS has no data on which to make an analysis of the impact of the rule, including whether or not it may be economically significant. HHS' inadequate comment period and insufficient data are unacceptable grounds for a policy change that could be of serious consequence to state Medicaid HCBS programs, home care workers, and the consumers who rely on these services.

Home care workers have joined unions to advocate for increased wages, create sustainable career pathways, and improve the care their patients receive through Medicaid. We strongly urge HHS to protect many of our nation's most vulnerable workers and patients by immediately withdrawing this proposal.

Sincerely,

 Kamala D. Harris United States Senator	 Anna G. Eshoo Member of Congress	 Zoe Lofgren Member of Congress
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 Dianne Feinstein United States Senator	 Salud O. Carbajal Member of Congress	 Juan Vargas Member of Congress
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 John Garamendi Member of Congress	 Mark DeSaulnier Member of Congress	 Grace F. Napolitano Member of Congress
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^[4] Institute of Medicine, *Retooling for an Aging America* (2008), pp. 200-01; See PHI, *Caring in America - A Comprehensive Analysis of America's Fastest Growing Jobs: Home Health and Personal Care Aides* (December 2011); See also Hewitt, Amy et al., National Direct Service Workforce Resource Center at CMS, *A synthesis of direct service workforce demographics and challenges across intellectual/developmental disabilities, aging, physical disabilities and behavioral health* (November 2008).

Alan Lowenthal

Alan S. Lowenthal
Member of Congress

Jared Huffman

Jared Huffman
Member of Congress

Julia Brownley

Julia Brownley
Member of Congress

Ami Bera

Ami Bera, M.D.
Member of Congress

Jimmy Panetta

Jimmy Panetta
Member of Congress

Nanette Diaz Barragan

Nanette Barragan
Member of Congress

Mark Takano

Mark Takano
Member of Congress

Brad Sherman

Brad Sherman
Member of Congress

Mike Thompson

Mike Thompson
Member of Congress

Lucille Roybal-Allard

Lucille Roybal-Allard
Member of Congress

Pete Aguilar

Pete Aguilar
Member of Congress

Raul Ruiz

Raul Ruiz, M.D.
Member of Congress

Barbara Lee

Barbara Lee
Member of Congress

Ro Khanna

Ro Khanna
Member of Congress

Susan A. Davis

Susan A. Davis
Member of Congress

Adam B. Schiff

Adam B. Schiff
Member of Congress

Jerry McNerney

Jerry McNerney
Member of Congress

Karen Bass

Karen Bass
Member of Congress

Scott H. Peters

Scott H. Peters
Member of Congress

Tony Cardenas

Tony Cardenas
Member of Congress

Eric Swalwell

Eric Swalwell
Member of Congress

Jackie Speier

Jackie Speier
Member of Congress

J. Luis Correa

J. Luis Correa
Member of Congress

Ted W. Lieu

Ted W. Lieu
Member of Congress

Linda T. Sánchez

Linda T. Sánchez
Member of Congress

Judy Chu

Judy Chu
Member of Congress

Doris Matsui

Doris O. Matsui
Member of Congress

Norma J. Torres

Norma J. Torres
Member of Congress

Jim

Jim Costa
Member of Congress

Jimmy Gomez

Jimmy Gomez
Member of Congress

Maxine Waters

Maxine Waters
Member of Congress